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No. 97-1669

IN THE

Supreme Court of the United States

OCTOBER TERM, 1997

CASSAN ENTERPRISES, INC., ET AL.,
Petitioners,

v.

DOLLAR SYSTEMS, INC., ET AL.,
Respondents.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit

PETITIONERS' REPLY BRIEF

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APP

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Respondents' Brief in Opposition does not take issue with the premise of the Petition for Writ of Certiorari, *i.e.*, that there is "widespread confusion in [Contract Clause cases] about the deference to be accorded state legislative judgments regarding the reasonableness and appropriateness of legislation that affects private contracts." Cert. Petition at 8. Nor can the Respondents dispute the necessity or importance of guidance from this Court on such a central and recurring issue of constitutional law.

Rather, Respondents denigrate the importance of the particular legislation involved in this case, dismissing franchise protection laws as "special interest legislation." Resp. Brief at 4. This

illustrates how phrases such as "special interest legislation" have become facile substitutes for analysis under the Contract Clause. Respondents do not explain how this legislation fails to serve a "significant and legitimate public purpose" by addressing problems acknowledged as important by Congress and this Court in an industry constituting almost half of the retail economy. Nor do Respondents identify the "special interest" that induced twenty-two states to provide protection in this area. *Compare Nieves v. Hess Oil Virgin Islands Corp.*, 819 F.2d 1237, 1250-51 (3d Cir.) (statute was "special interest" legislation because directed at *one* employer), *cert. denied*, 484 U.S. 963 (1987).

Respondents' contention that there is no conflict in the federal courts of appeals is a tacit admission that conflicts are rife when the analysis is broadened to include decisions of the state courts and federal district courts. Even isolating the federal courts of appeals, it is apparent that Respondents' proposition is true only in the narrowest sense. Contract Clause cases at the federal appellate level seldom arise in the same factual context. However, even a casual review of the cases cited in the Petition demonstrates fundamentally different views between—and within—the Circuits, not only on the proper application of the Contract Clause, but also on the relative importance of and the consistency between *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234 (1978), and *Energy Reserves Group, Inc. v. Kansas Power & Light Co.*, 459 U.S. 400 (1983). There is genuine and unmistakable confusion about what those cases mean and what the Contract Clause requires.

Opinions such as the Ninth Circuit's below have cut the Contract Clause loose from its historical moorings and have given judges almost an unfettered license to substitute their judgment on the public good for that of the legislature. The specific legislation at issue in this case is a "fundamental policy" of the State of Washington which the state legislature explicitly

made applicable to pre-existing franchise agreements. There is nothing "garden variety" about a judicial determination that these legislative judgments are unconstitutional.

Under the FIPA, Dollar can continue to collect franchise fees and control its trademarks. The FIPA only requires that Dollar exercise those rights fairly and consistently: affording its franchisees the same uniformity that it demands of them. Any citizen has a legitimate expectation that he will not be deprived of a statutory right or protection by an arbitrary application of a constitutional proscription. Yet that occurred below and will continue to occur until this Court provides critical clarification of the scope and meaning of the Contract Clause.

Respectfully submitted,

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